

REMARKS

In reply to the Office Action mailed September 17, 2004, Applicants have amended claims 28, 36, 40, 44, 57, 66, 72, 78, and 81, and added new claims 95-103. Please consider the following remarks.

Claims 28-32, 36-47, 57-69, and 72-83 were rejected under 35 U.S.C. § 112, first paragraph, as lacking enablement. Applicants thank Examiner George for the telephonic interview of January 6, 2005 with Catherine M. McCarty and Janis K. Fraser, during which this rejection was discussed. In advance of the interview, Applicants submitted a proposed amendment adding the term "an inflammatory condition of the upper respiratory tract" to the claims. During the telephonic interview, Examiner George indicated that the proposed amendment overcame the rejection. The amendment is submitted herewith. Applicants therefore request the rejection be withdrawn.

Claims 40-43, 57-65, and 78-80 were rejected under 35 U.S.C. § 112, first paragraph, as lacking enablement because of the presence of the term "preventing" in the claims. This rejection was discussed in the January 6, 2005 interview with Examiner George, and again in the second interview with Examiner George and his supervisor Examiner Kuntz on February 1, 2005. During the second interview, Examiner Kuntz indicated that the presence of the term "prevent" in the claims raises no issues under 35 U.S.C. § 112, and that the amended claims would be allowable pending further examination of the prior art.¹ Accordingly, Applicants request that the rejection be withdrawn.

Claims 27-94 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims in copending and commonly owned U.S. Patent No. 6,291,445 B1 and over the claims in copending and commonly owned U.S. Patent No. 6,686,346 B2. A terminal disclaimer in compliance with 37 CFR 1.321(c) and the requisite fee are filed herewith, thus overcoming the rejection.

¹ Applicants note that the interview summary mailed by Examiner George on February 4, 2005 says that the Examiner has agreed to withdraw the rejections under 35 U.S.C. § 112, second paragraph. Since there were no rejections pending under that section of statute, Applicants believe that this is a typographical error and that the rejections intended to be addressed were the rejections under 35 U.S.C. § 112, first paragraph.

Applicant : Hans Nilsson et al.
Serial No. : 10/716,657
Filed : November 17, 2003
Page : 16 of 16

Attorney's Docket No.: 06275-081003 / D 1591-2 US

Applicants believe the application is in condition for allowance, which action is requested.

Please apply other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date:

February 17, 2005

Janis K. Fraser, Ph.D., J.D.

Reg. No. 34,819

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20989295.doc